

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

CBS RADIO INC. OF PHILADELPHIALicensee of Station WIP(AM),
Philadelphia, Pennsylvania)
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File No. EB-05-IH-0150

FRN: 0003741998

NAL/Acct. No. 200732080008

Facility ID No. 28626

ORDER

Adopted: September 25, 2009**Released: September 25, 2009**

By the Acting Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau ("Bureau") and CBS Radio Inc. of Philadelphia ("CBS"). The Consent Decree terminates an investigation and cancels a Notice of Apparent Liability for Forfeiture ("NAL"),¹ Forfeiture Order,² and Memorandum Opinion and Order ("MO&O")³ by the Bureau against CBS for possible violation of Section 73.1216 of the Commission's rules⁴ regarding licensee-conducted contests.

2. The Bureau and CBS have negotiated the terms of the Consent Decree that resolve this matter. A copy of the Consent Decree is attached hereto and incorporated by reference.

3. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree, which terminates the investigation and cancels the NAL, Forfeiture Order, and MO&O.

4. In the absence of material new evidence relating to this matter, we conclude that our investigation raises no substantial or material questions of fact as to whether CBS possesses the basic qualifications, including those related to character, to hold or obtain any Commission license or authorization.

¹ See *CBS Radio Inc. of Philadelphia*, Notice of Apparent Liability, 22 FCC Rcd 4223 (Enf. Bur., Investigations & Hearings Div. 2007) ("NAL")

² See *CBS Radio Inc. of Philadelphia*, Forfeiture Order, 23 FCC Rcd 10569 (Enf. Bur., Investigations & Hearings Div., 2008).

³ See *CBS Radio Inc. of Philadelphia*, Memorandum Opinion and Order, DA 09-1877 (Enf. Bur., Investigations & Hearings Div. rel. August 26, 2009).

⁴ See 47 C.F.R. § 73.1216.

5. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Communications Act of 1934, as amended,⁵ and Sections 0.111 and 0.311 of the Commission's rules,⁶ the Consent Decree attached to this Order **IS ADOPTED**.

6. **IT IS FURTHER ORDERED** that the above-captioned investigation **IS TERMINATED** and the Notice of Apparent Liability for Forfeiture, Forfeiture Order, and Memorandum Opinion and Order **ARE CANCELLED**.

7. **IT IS FURTHER ORDERED** that the third-party complaint against CBS before the Bureau related to the above-captioned-investigation as of the date of this Consent Decree **IS DISMISSED**.

8. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class certified mail, return receipt requested, to Anne Lucey, Esq., CBS Radio Inc. of Philadelphia, 2175 K Street, NW, Suite 350, Washington, DC 20037, and to Dennis P. Corbett, Esq., Philip A. Bonomo, Esq., and Jessica L. Schneider, Esq., Lerman Senter PLLC, 2000 K Street, N.W., Suite 600, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Suzanne M. Tetreault
Acting Chief, Enforcement Bureau

⁵ See 47 U.S.C. § 154(i), 503(b).

⁶ See 47 C.F.R. §§ 0.111, 0.311.

**Before the
Federal Communications Commission
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In the Matter of)	
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CBS RADIO INC. OF PHILADELPHIA)	File No. EB-05-IH-0150
)	FRN: 0003741998
Licensee of Station WIP(AM),)	NAL/Acct. No. 200732080008
Philadelphia, Pennsylvania)	Facility ID No. 28626

CONSENT DECREE

1. The Enforcement Bureau ("Bureau") and CBS Radio Inc. of Philadelphia ("CBS"), by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether CBS violated Section 73.1216 of the Commission's rules concerning licensee-conducted contests.¹

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended, 47 U.S.C. § 151 *et seq.*
 - (b) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (c) "CBS" means CBS Radio Inc. of Philadelphia and all of its direct and indirect subsidiaries that hold authorizations issued by the Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Complaint" means that certain third party complaint received by, or in the possession of, the Bureau, and subject to the MO&O.
 - (f) "Contest" means that certain contest conducted by CBS on December 1, 2004, whose prize was the opportunity to compete in "Wing Bowl 13," as described in the MO&O.
 - (g) "Contest Rule" means 47 C.F.R. § 73.1216.
 - (h) "Compliance Plan" means the program described in this Consent Decree at paragraph 9.
 - (i) "Effective Date" means the date on which the Bureau releases the Adopting Order.
 - (j) "Forfeiture Order" means that certain Forfeiture Order of the Bureau's Investigations and Hearings Division released July 10, 2008 (File No. EB-05-IH-0150, DA 08-1628).

¹ See 47 C.F.R. § 73.1216.

- (k) “MO&O” means that certain Memorandum Opinion and Order of the Bureau released August 26, 2009 (File No. EB-05-IH-0150, DA 09-1877).
- (l) “NAL” means that certain Notice of Apparent Liability for Forfeiture released by the Bureau’s Investigations and Hearings Division on March 2, 2007 (File No. EB-05-IH-0150, DA 07-960).
- (m) “Order” or “Adopting Order” means an Order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
- (n) “Parties” means CBS and the Bureau.
- (o) “Rules” means the Commission’s regulations found in Title 47 of the Federal Regulations.
- (p) “Station” means Station WIP(AM), Philadelphia, Pennsylvania, Facility ID # 28626.

II. BACKGROUND

3. The FCC received a complaint, dated January 18, 2005 (the “Complaint”), alleging that the Station failed to conduct a competitive eating contest entitled “Wing Off” (the “Contest”), in accordance with the Contest’s advertised material terms.² The Complaint alleged that, on December 1, 2004, the complainant won the Contest, which offered winners a chance to compete in a popular competitive eating competition, “Wing Bowl 13.”³ The Complaint alleged that the Station revoked the prize awarded to the Complainant due to Contest conditions that the Station neither announced nor advertised.⁴ In response to the Complaint, the Bureau sent a Letter of Inquiry to CBS, dated June 28, 2005.⁵ CBS responded by letter dated August 1, 2005.⁶ In its Response to the Letter of Inquiry, CBS admitted that the Complainant qualified to win the Contest prize, an opportunity to compete in the Wing Bowl 13,⁷ but that the Station disqualified him after determining that he belonged to a competitive eating association, the Association of Independent Competitive Eaters.⁸

4. On March 2, 2007, the Bureau’s Investigations and Hearings Division (the “Division”) released a Notice of Apparent Liability for Forfeiture (“NAL”).⁹ The Division found in the NAL that

² See Letter from Mr. Arnie Chapman to the Federal Communications Commission, dated January 18, 2005 (“Complaint”). The Complaint alleges that the Contest solicited ideas and actual performance of competitive eating stunts from participants.

³ See *id.* at 1-4.

⁴ See *id.* at 1-3.

⁵ See Letter from William D. Freedman, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau, to Infinity Broadcasting Corporation of Philadelphia, dated June 28, 2005 (“LOI”).

⁶ See Letter from Steven A. Lerman, Dennis P. Corbett, and Phillip A. Bonomo, Attorneys for Infinity Broadcasting Corporation of Philadelphia, to David J. Brown, Esq., Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated August 1, 2005 (the “LOI Response”).

⁷ See LOI Response at 4 (“Chapman . . . qualified through an eating stunt performed at the WIP studios.”).

⁸ See *id.*

⁹ See *CBS Radio Inc. of Philadelphia*, Notice of Apparent Liability, 22 FCC Rcd 4223 (Enf. Bur., Investigations & Hearings Div. 2007) (“NAL”).

CBS failed to announce the material terms of a contest and neglected to conduct the contest in accordance with its material terms, in apparent violation of the Commission's contest rule, 47 C.F.R. § 73.1216.¹⁰ Specifically, the Division found that CBS apparently violated the rule by disqualifying a contest winner and revoking his prize due to an unannounced term.¹¹ On April 2, 2007, CBS filed a response to the NAL.¹² On July 10, 2008, the Division issued a Forfeiture Order against CBS affirming the findings in the NAL.¹³ On August 11, 2008, CBS filed a Petition for Reconsideration of the Division's decision.¹⁴ On August 26, 2009, the Bureau issued a Memorandum Opinion and Order ("MO&O") affirming the Forfeiture Order holding CBS liable for a forfeiture of \$4,000 under Section 503(b)(1)(B) of the Act, and ordered CBS to pay the proposed forfeiture within thirty (30) days of the MO&O release date.¹⁵

III. TERMS OF AGREEMENT

5. **Adopting Order.** The Parties agree that the provisions of this Consent Decree shall be subject to final approval by the Bureau by incorporation of such provisions by reference in the Adopting Order without change, addition, modification, or deletion.

6. **Jurisdiction.** CBS agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

7. **Effective Date: Violations.** The Parties agree that this Consent Decree shall become effective on the date on which the Bureau releases the Adopting Order. Upon release, the Adopting Order and this Consent Decree shall have the same force and effect as any other Order of the Bureau. Any violation of the Adopting Order or of the terms of this Consent Decree shall constitute a separate violation of a Bureau Order, entitling the Bureau to exercise any rights and remedies attendant to the enforcement of a Commission Order.

8. **Termination of Investigation.** As part of the Adopting Order, in express reliance on the covenants and representations contained herein, and in order to avoid the potential expenditure of additional public resources, the Bureau shall terminate the above-captioned case, cancel the NAL, Forfeiture Order, and MO&O, and dismiss with prejudice the Complaint. From and after the Effective Date, the Bureau shall not, either on its own motion or in response to any petition to deny or other third-party objection, initiate any inquiries, investigations, forfeiture proceedings, hearings, or other sanctions or actions against CBS, the Station, or any pending or future application to which CBS or the Station is a

¹⁰ See *id.* at 4225-4226. Section 73.1216 of the Commission's rules provides: "A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term." 47 C.F.R. § 47.1216.

¹¹ See *NAL*, 22 FCC Rcd at 4225-4226.

¹² See Response to Notice of Apparent Liability for Forfeiture from Steven A. Lerman, Dennis P. Corbett, and Philip A. Bonomo, Attorneys, Leventhal Senter & Lerman PLLC, to Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, dated April 2, 2007 ("*NAL Response*").

¹³ See *CBS Radio Inc. of Philadelphia*, Forfeiture Order, 23 FCC Rcd 10569 (Enf. Bur., Investigations & Hearings Div., 2008).

¹⁴ See *CBS Radio Inc. of Philadelphia*, Petition for Reconsideration (filed August 11, 2008).

¹⁵ See *CBS Radio Inc. of Philadelphia*, Memorandum Opinion and Order, DA 09-1877 (Enf. Bur., Investigations & Hearings Div. rel. August 26, 2009).

party (including, without limitation, any application for a new station, for renewal of license, for assignment of license, or for transfer of control), based in whole or in part on (i) the NAL, Forfeiture Order, or MO&O, (ii) the Complaint, (iii) any other similar complaints alleging violation by the Station of the Contest Rule with respect to the Contest occurring prior to the Effective Date, or (iv) the allegations contained in any of the foregoing. Without limitation to the foregoing, the Bureau shall not use the facts of this Consent Decree, the NAL, Forfeiture Order, MO&O, the Complaint, any other similar complaints alleging violation by the Station of the Contest Rule with respect to the Contest occurring prior to the Effective Date, or the underlying facts, behavior, or broadcasts that relate to any of the foregoing, for any purpose relating to CBS or the Station, and shall treat all such matters as resolved for all purposes. In consideration for the termination of the above-captioned case and in express reliance on the provisions of paragraph 8 hereof, CBS agrees to the terms, conditions, and procedures contained herein, and agrees not to pursue any further challenges to the Bureau's findings, as outlined in the NAL, Forfeiture Order, and MO&O described in paragraph 4, above.

9. **Compliance Plan.** For purposes of settling the matters set forth herein, CBS agrees to create within 30 days a Compliance Plan related to future compliance with the Act, the Commission's Rules, and the Commission's Orders. The Compliance Plan will include, at a minimum, the following components:

a. CBS shall prepare and distribute a memorandum to all Station employees materially involved in the broadcast of programming explaining the FCC's Contest Rule and setting forth Station procedures applicable to conducting Station contests.

b. Following distribution of the aforesaid memorandum, relevant Station employees shall receive appropriate training with respect to compliance with the Contest Rule and Station procedures with respect thereto. CBS shall conduct such training annually for all relevant employees and on initial appointment for new relevant employees within the terms of this Consent Decree.

10. **Compliance Reports.** CBS will file compliance reports with the Bureau ninety days after the Effective Date, twelve months after the Effective Date, and three years after the Effective Date. Each compliance report shall include a compliance certificate from an officer, as an agent of CBS, stating that the officer has personal knowledge that CBS has established operating procedures intended to ensure compliance with this Consent Decree, together with an accompanying statement explaining the basis for the officer's compliance certification. All compliance reports shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Room 4-C330, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554.

11. **Termination Date.** Unless stated otherwise, the requirements of this Consent Decree will expire three years after the Effective Date.

12. **Voluntary Contribution.** CBS agrees that it will make a voluntary contribution to the United States Treasury in the amount of \$4,000. The payment will be made within five days after the Effective Date of the Adopting Order. The payment must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced in the caption to the Adopting Order. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). CBS will also send electronic notification on the

date said payment is made to Hillary.DeNigro@fcc.gov, Ben.Bartolome@fcc.gov, Kenneth.Scheibel@fcc.gov, and to Anjali.Singh@fcc.gov.

13. **Waivers.** CBS waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Bureau issues an Order adopting the Consent Decree without change, addition, modification, or deletion. CBS shall retain the right to challenge Bureau interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Bureau) brings a judicial action to enforce the terms of the Adopting Order, neither CBS nor the Bureau shall contest the validity of the Consent Decree or the Adopting Order, and CBS shall waive any statutory right to a trial *de novo*. CBS hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. § 504 and 47 C.F.R. § 1.1501 *et seq.*, relating to the matters addressed in this Consent Decree.

14. **Liability.** CBS admits, solely for the purpose of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 8 hereof, that the broadcast material at issue in the NAL, Forfeiture Order, and MO&O is in violation of 47 C.F.R. § 73.1216, assuming construction of this term as it is construed by the Bureau as of the date hereof. Notwithstanding any other provision of this Consent Decree, it is expressly agreed and understood that if this Consent Decree, or paragraph 8 hereof, or both, are breached by the Bureau, or are invalidated or modified to CBS' prejudice by the Commission, Bureau, or any court, then and in that event the provisions of the immediately-preceding sentence shall be of no force or effect whatever, and CBS shall not, by virtue of that sentence or any other provision of this Consent Decree, be deemed to have made any admission concerning any material broadcast on the Station. Notwithstanding the terms of paragraph 8 and the preceding terms of this paragraph, the underlying broadcast material at issue in the NAL, Forfeiture Order, and MO&O remains viable law in terms of precedent purposes regarding the Contest Rule, unless and until a ruling of an authority of competent jurisdiction finds otherwise.

15. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which CBS does not expressly consent) that provision will be superseded by such Commission rule or Order.

16. **Successors and Assigns.** CBS agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

17. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties.

18. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

19. **Paragraph Headings.** The headings of the Paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

20. **Authorized Representative.** Each party represents and warrants to the other that it has full power and authority to enter into this Consent Decree.

21. **Counterparts.** This Consent Decree may be signed in any number of counterparts (including by facsimile), each of which, when executed and delivered, shall be an original, and all of which counterparts together shall constitute one and the same fully executed instrument.

Suzanne M. Tetreault
Acting Chief
Enforcement Bureau

Date

Stephen A. Hildebrandt
Vice President and Deputy General Counsel
CBS Radio Inc.

Date